

Claimant alleges accidental injury on August 19, 1994, when he slipped on oil and injured his low back. This matter went to preliminary hearing on April 20, 1999, at which

time the Administrative Law Judge held that claimant had settled his claim with respondent through a Form D on February 5, 1995, and that all benefits were denied. The matter was submitted to the Workers Compensation Appeals Board, which entered its decision on July 9, 1999. The Board found that the Form D settled the claim for the October 14, 1994, accident, but did not settle a claim for an injury on August 19, 1994. The Board went on to find that claimant had failed to submit timely written claim for an accidental injury on August 19, 1994, based upon the evidence before it at that time. Claimant had testified at the preliminary hearing he had not completed any paperwork at the time of the accident.

At this time, claimant submits a medical incident report prepared on August 19, 1994, signed by claimant and witnessed by Polly Harrison, which indicates claimant did suffer a slip and fall on that date. This report, which specifically discusses medical treatment through respondent's medical department, satisfies the written claim requirements of K.S.A. 44-520a.

However, at the second preliminary hearing, respondent argued that any injury suffered on August 19, 1994, did not wholly or partially incapacitate claimant from labor or service for the remainder of that day, shift or turn on which the injury was sustained. Therefore, respondent had no obligation to submit an accident report pursuant to K.S.A. 44-557. Respondent went on to argue that claimant failed to file an E-1 Application for Hearing within three years of the date of accident or two years of the date of the last payment of compensation, whichever is later. See K.S.A. 44-534(b). The last medical care provided to claimant for this back injury was March 1996. As the E-1 in this matter was not filed until March 1999, the Administrative Law Judge found claimant had failed to meet the requirements of K.S.A. 44-534(b) and benefits were again denied.

With regard to claimant's contention that the October 14, 1994, Form D should be set aside for fraud, no evidence was presented to the Board on that issue and claimant's appeal on that issue is denied.

The Appeals Board also finds that claimant has failed to meet the requirements of K.S.A. 44-534(b) in that the E-1 was not filed with the Division of Workers Compensation until March 18, 1999. This is well beyond the time limits set forth in the statute, and no proceedings for compensation shall be maintained as a result.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated August 3, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director